

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JUDSON WITHAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. 04-3401-CV-S-FJG
)	
CHRISTIAN COUNTY, MISSOURI, et al.,)	
)	
Defendants.)	

ORDER

Currently pending before the Court is Defendants' Motion to Dismiss for Failure to Prosecute (Doc. # 44) and Defendant's Motion to Reopen Discovery (Doc. # 55).

On February 24, 2006, defendants moved to dismiss plaintiff's Complaint because plaintiff's last filing in the case occurred on September 12, 2005. Defendants stated that plaintiff had not filed any discovery requests and they indicated they had been unable to contact plaintiff at his last telephone number. On March 3, 2006, the Court issued an Order directing plaintiff to show cause why his case should not be dismissed for lack of prosecution. On March 24, 2006, plaintiff filed Suggestions in Opposition to the Motion to Dismiss. Plaintiff stated that the defendants' assertions that they have not heard from him and did not know how to contact him were patently false. Plaintiff states that the defendants' attorneys have always had his email address and also knew his forwarding address. Plaintiff states that the assertions that he has refused to confer, talk on the phone, exchange or cooperate in discovery are patently false. Plaintiff states that he has always stayed in contact with counsel for the defendants and he can be contacted through his previous address and also through his

email address. Plaintiff states that it is the defendants' attorneys who have refused to speak with him and have hung up the phone when he has contacted them. Plaintiff asks the Court to consider imposing sanctions and also for an award of costs for his undertaking to oppose the defendants' motions.

On May 9, 2006, defendants filed a Motion to Reopen Discovery. Defendants state that they have recently produced several documents to plaintiff pursuant to his requests for production, but they believe there are other documents which still need to be located. They state they are in the process of locating these additional items and will supplement their discovery responses as soon as the items can be located. Counsel for defendants Christian County and Pat Wright represent that counsel for defendant Ron Cleek agrees with the requested extension. Defendants have requested that the Court enter an Amended Scheduling Order. Plaintiff filed Suggestions in Opposition to the Motion to Reopen Discovery, stating that he has not received any discovery from the defendants and that they have lied, refused to cooperate and hung up the phone when he called to discuss discovery matters.

Plaintiff again states that he has always been available and was never out of contact with counsel for the defendants. Plaintiff again asks the Court to grant him costs for opposing the defendants' motions. On June 2, 2006, defendants filed Supplemental Suggestions stating that they had received email communications from plaintiff requesting additional documents and items. Thus, they state that despite his opposition to the motion, he appears to be requesting additional discovery.

The Court finds that it would be in the best interests of all parties to extend discovery in this case. The Court will issue a separate Amended Scheduling and Trial

Order. Although the parties obviously have had difficulties communicating in the past, it appears that they have been able to resolve these issues and are presently able to communicate with each other. The Court declines to assess either costs or sanctions against the defendants. Although plaintiff obviously feels that their actions were done intentionally, the Court finds no basis to support this assertion. Accordingly, Defendants' Motion to Dismiss For Lack of Prosecution is hereby **DENIED** (Doc. # 44) and Defendants' Motion to Reopen Discovery is hereby **GRANTED** (Doc. # 55).

The Court also notes that plaintiff has recently begun contacting the Court via email. Plaintiff is reminded that the Court does not accept email filings and any emails received by the Court will not be made a part of the Court's file. If plaintiff wishes to file a motion or a response to a motion, he must mail it to the Clerk's Office for filing at the following address:

Charles Evans Whittaker Courthouse
U. S. District Court Clerk's Office
400 E. 9th Street
Kansas City, Missouri 64106

Date: July 27, 2006
Kansas City, Missouri

S/ FERNANDO J. GAITAN JR.
Fernando J. Gaitan Jr.
United States District Judge